

SCHOEMAN UPDIKE KAUFMAN & GERBER LLP

Til J. Dallavalle, Esq. ID# 022582006

155 Willowbrook Boulevard, Suite 300

Wayne, New Jersey 07470

T: (973) 256-9000

*Attorneys for Defendant Wal-Mart Stores East, LP
(incorrectly named as "Walmart Stores, Inc.")*

MARIANNE SPINELLA,

Plaintiff(s),

vs.

WALMART STORES, INC., ABC CORP
and JOHN DOE,

Defendant(s).

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Civil Action No. _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Wal-Mart Stores East, LP (hereinafter "Wal-Mart Stores East" and incorrectly named as Walmart Stores, Inc.), a Delaware limited partnership with its principal place of business in Bentonville, Arkansas, hereby removes the above-captioned action from the Superior Court of New Jersey, Law Division, Middlesex County, to the United States District Court for the District of New Jersey, based upon the following:

1. On or about May 15, 2018, Plaintiff Marianne Spinella commenced a civil action by filing a Complaint in the Superior Court of New Jersey, Law Division, Middlesex County, entitled MARIANNE SPINELLA -vs- WALMART STORES, INC., ABC CORP and JOHN DOE, Docket No. MID-L-003003-18 (the "Complaint").

2. On May 22, 2018, the Summons and Complaint were served on Wal-Mart Stores East.

3. May 22, 2018 was the first date on which Wal-Mart Stores East received copies of the Summons and Complaint through service or otherwise.

4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons and Complaint, which constitute all process, pleadings and orders served upon Wal-Mart Stores East are attached hereto as Exhibit “A.”

5. Pursuant to 28 U.S.C. § 1446(b), this Notice is being filed with this Court within thirty (30) days of Wal-Mart Stores East’s first receipt “through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.”

6. This Honorable United States District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because this is a civil action in which there is complete diversity of citizenship between Plaintiff and the Defendant, and in which the amount in controversy exceeds \$75,000, exclusive of interest and costs, as described below.

7. Based upon the allegations in the Complaint, Plaintiff is a citizen of the State of New Jersey, residing at 209 William Street, Scotch Plains, New Jersey.

8. Wal-Mart Stores East is a limited partnership organized under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas, and is not a citizen of New Jersey. The general partner of Wal-Mart Stores East is WSE Management LLC, a limited liability company organized under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas. The limited partner of Wal-Mart Stores East is WSE Investment, LLC, a limited liability company organized under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas. The sole member of both WSE Management LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC (formerly known as Wal-Mart Stores East, Inc.), a limited liability company organized under the laws of the State of Arkansas with its principal place of business in Bentonville, Arkansas. The sole member and parent company of Wal-Mart Stores East, LLC is Walmart Inc., a corporation organized under the laws of the State of Delaware with a principal place of business in Bentonville, Arkansas.

9. Neither Wal-Mart Stores East nor Walmart, Inc. is a citizen of the State of New Jersey.

10. Diversity of citizenship existed among the parties when the Complaint was filed on or about May 15, 2018. Diversity of citizenship still exists among the parties at the time this Notice of Removal is being filed.

11. The Complaint alleges that on or about October 29, 2017, Plaintiff Marianne Spinella was lawfully on the premises of the Walmart store located at 1501 Route 22 West, in Watchung, New Jersey when she sustained a “fall” causing her to “sustain serious personal injuries.” Complaint, First Count ¶ 1,3. The Complaint also alleges that defendants were negligent and that as a direct and proximate result of that negligence, Plaintiff “sustained serious personal injuries, both temporary and permanent in nature, she has and will be obliged to spend money on doctor bills, hospital bills, x-rays, care and medicine in an effort to cure and alleviate her injuries and she has and will be unable to pursue the usual course of her occupation and duties, all to her damage.” Complaint, First Count ¶ 7.

12. On June 13, 2018, Defense Counsel forwarded correspondence to Plaintiff’s Counsel requesting information on the nature and extent of the alleged damages and that they advise whether Plaintiff will stipulate that her damages are less than \$75,000.00, exclusive of interest and costs. (See copy of correspondence attached as Exhibit “B”). In addition, said correspondence notes, “This information is necessary to determine whether the amount in controversy is such that this matter may be removed to federal court based on diversity of citizenship of the parties”. *Id.*

13. On June 20, 2018, Defense Counsel communicated with Plaintiff’s Counsel via telephone and was advised that Plaintiff’s claimed injuries include tears to both knees as well as unspecified injuries to her right ankle (allegedly broken in the fall), left shoulder, left hip and back

for which she is currently receiving treatment. Plaintiff's treatments included hospitalization and a continuing course of physical therapy. Plaintiff's Counsel further indicated that Ms. Spinella is being evaluated for possible surgical intervention. Plaintiff's Counsel would not provide a total amount of outstanding medical bills, but refused to sign a stipulation limiting damages to under \$75,000.

14. While Wal-Mart Stores East denies all liability to Plaintiff and denies that she is entitled to any of the relief sought by the Complaint, based upon the allegations of the Complaint and the injuries alleged, and based upon information and belief, the amount in controversy exceeds the \$75,000 jurisdictional amount under 28 U.S.C. § 1332.

15. Therefore, this civil action is removable to this Court pursuant to 28 U.S.C. §1441.

16. Plaintiff's Counsel has also consented to removal.

17. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being submitted for filing with the Clerk of the Superior Court, Law Division, Middlesex County, and is being served upon Plaintiff.

18. In filing this Notice of Removal, Wal-Mart Stores East does not waive any defects in service of process, venue or personal jurisdiction.

19. For the foregoing reasons, this United States District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a).

SCHOEMAN UPDIKE KAUFMAN & GERBER LLP
Attorneys for Defendant Wal-Mart Stores East, LP
(incorrectly named as "Walmart Stores, Inc.")

By:


Til J. Dallavalle

Dated: June 21, 2018

LOCAL CIVIL RULE 11.2 VERIFICATION

Other than the action filed in the Superior Court of New Jersey, Law Division, Middlesex County, which is the subject of this Notice of Removal, the matter in controversy, to the best of Defendant Wal-Mart Stores East, LP's knowledge, information and belief, is not the subject of any other action pending in any court, or of any other pending arbitration or administrative proceeding.

SCHOEMAN UPDIKE KAUFMAN & GERBER LLP
Attorneys for Defendant Wal-Mart Stores East, LP
(incorrectly named as "Walmart Stores, Inc.")

By:



Til J. Dallavalle

Dated: June 21, 2018

CERTIFICATION OF SERVICE

I hereby certify that on this date, I caused to be served via first class mail, a true and correct copy of the foregoing Notice of Removal on:

Laura A. Rabb, Esq.
Rabb Hamill, P.A.
284 Amboy Avenue
Woodbridge, New Jersey 07095
Attorneys for Plaintiff

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.



Til J. Dallavalle

Dated: June 21, 2018